

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1944 - SB 1944

March 25, 2022

SUMMARY OF BILL AS AMENDED (015408, 016321): Prohibits local education agencies (LEA) or public schools from making obscene materials or materials harmful to minors available to students in the school libraries controlled by the LEA or public school. Excludes LEAs, public schools, and employees and private contractors of LEAs or public schools from the exception to the offense of obscenity if the LEA, public school, employee, or private contractor possesses obscene material that is harmful to minors on public school premises.

Requires each local board of education and public charter school to adopt a policy that allows the parent or legal guardian of a student enrolled in the LEA or public charter school to report to the director of schools or the director of the public charter school, any material being made available to students through the student's school library that is obscene or harmful to minors. Requires the applicable director to remove the questionable material from each school library under the respective director's control for a minimum of 30 days.

Requires the local board of education or the governing body of the public charter school to review and determine whether the material is obscene, harmful to minors, or appropriate for students no later than the next regularly scheduled meeting of the board or the governing body. Requires removal of material determined to be obscene or harmful to minors by ages and grades. Authorizes any person at any time to petition the local board or governing body to reconsider its determination that material removed from a school library is obscene, harmful to minors, or otherwise inappropriate for students. Upon notice of filed petition, requires the local board or governing body to review the material and determine if the material should be returned to school libraries. Establishes a local board's or governing body's determination that material is appropriate for students is final and is not subject to further review or reconsideration. Prohibits a local board or governing body from accepting petitions for reconsideration of, or otherwise remove from a school library, material that the local board or governing body has previously determined to be appropriate for students.

Prohibits an LEA or public school from terminating, disciplining, or otherwise taking an adverse employment action against a public school librarian or an employee of the LEA or public school who is responsible for reviewing or providing books or other educational materials for the presence of materials alleged or deemed to be obscene, harmful to minors, or inappropriate for students in the school library, unless the librarian or employee has previously been notified in writing by the librarian's or employee's director of schools or school principal to remove material determined to be obscene, harmful to minors, or inappropriate for students from the public school library and has failed remove the material.

Authorizes the Commissioner of the Department of Education (DOE) to withhold state funds in any amount from an LEA or public charter school that fails to comply. Requires each LEA and public charter school to submit an annual report to the DOE of the obscene or harmful material that is permanently removed from school libraries and the number of petitions for reconsideration received by the LEA or public charter school for the removed material from the LEA or public charter school's library.

FISCAL IMPACT OF BILL AS AMENDED:

NOT SIGNIFICANT

Assumptions for the bill as amended:

- Pursuant to Tenn. Code Ann. § 39-17-901(6), harmful to minors means that quality of any description or representation, in whatever form, of nudity, sexual excitement, sexual conduct, excess violence or sadomasochistic abuse when the matter or performance:
 - Would be found by the average person applying contemporary community standards to appeal predominantly to the prurient, shameful or morbid interests of minors;
 - Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
 - Taken as whole lacks serious literary, artistic, political or scientific values for minors.
- It is reasonably assumed LEAs are currently prohibiting materials considered harmful to minors from being available to students in school libraries.
- Tennessee Code Annotated § 39-17-902(c)(1)-(2) establishes that it is a Class A misdemeanor with a maximum \$50,000 fine if obscene material is distributed to a minor. The offense is enhanced to a Class E felony upon second or subsequent violation after a conviction.
- Based on information provided by the Department of Correction, there have been zero admissions of the Class E felony offense of obscenity in the past 10 years.
- Based on information provided by the Administrative Office of the Courts, there have been an average of 2.5 Class A misdemeanor convictions for the offense of obscenity in each of the past 10 years.
- There will not be a sufficient change in the number of prosecutions for state or local government to experience any significant change in revenue or expenditures.
- LEAs will comply with the proposed legislation utilizing existing resources without a significant increase in expenditures or a significant loss of state funding.
- Local education boards and governing bodies of public charter schools will be able to amend their policies within existing resources and during their regularly scheduled meetings.
- Based on the Fiscal Review Committee's 2008 study and the Administrative Office of the Courts' 2012 study on collection of court costs, fees, and fines, collection in criminal cases is insignificant. The proposed legislation will not significantly change state or local revenue.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The script is cursive and fluid, with the first letters of each name being capitalized and prominent.

Krista Lee Carsner, Executive Director

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